

REMARKS

Claims 1-143 are currently pending in the application. Claim 113 is amended herein to add the phrase "less than about," which was inadvertently omitted. Support for the amendment to claim 113 can be found on page 46, which indicates that the compositions of the invention can contain less than about 0.8% by weight of alkali metal dichromate.

In response to the requirement for restriction, applicants hereby elect Group I, claims 1-30, 113-119, and 136-143, for examination in this application.

The Examiner has further required an election of species, selected from: a) alkali metal; b) free of alkali metal; c) composition comprising one organism; and d) composition comprising a mixture of organisms. As previously indicated, claim 113 has been amended to indicate that the composition contains "less than about 0.8% by weight of alkali metal dichromate..." as opposed to "0.8% by weight of alkali metal dichromate." In light of this amendment, applicants submit that an election of species is unnecessary. Section 806.04(f) of the MPEP states:

Claims to be restricted to different species must be mutually exclusive. The general test as to when claims are restricted, respectively, to different species is the fact that one claim recites limitations which under the disclosure are found in a first species but not in a second, while a second claim recites limitations disclosed only for the second species and not the first. This is frequently expressed by saying that claims to be restricted to different species must recite the mutually exclusive characteristics of such species.

The claims of Group I are not mutually exclusive under this standard. With respect to the first and second identified species, alkali metal and free of alkali metal, none of the Group I claims require the presence of alkali metal, nor do they specifically exclude alkali metal. Rather, claims 1-5, 7-30, 113-115, and 117-119 all relate to compositions wherein the amount of alkali metal present is less than a certain percentage or amount. This necessarily encompasses compositions with an amount of

alkali metal below a certain percentage or amount, and compositions that are free of alkali metal. Claims 6, 116, and 136-143 relate to compositions that are "substantially free of alkali metal dichromate." As defined by the specification, "substantially free of alkali metal dichromate indicates that no alkali metal dichromate is added to the composition during production, including the sporulation and storage of said composition."¹ These claims thus encompass compositions that are completely free of alkali metal, as well as compositions that have a residual amount of alkali metal. Thus, none of the Group I claims are mutually exclusive with regards to the first and second identified species, and an election of either the first or second species would be an election of all Group I claims.

With regards to the third and fourth identified species, composition comprising one organism, and composition comprising a mixture of organisms, all the claims of Group I recite the limitation "at least one species of protozoa." This necessarily encompasses compositions comprising one organism, and compositions comprising a mixture of organisms. Thus, none of the claims of Group I can be said to be mutually exclusive with respect to the third and fourth identified species, and an election of either the third or fourth species would be an election of all Group I claims.

Given the foregoing, whatever species is elected by applicants will be an election of all Group I claims, claims 1-30, 113-119, and 136-143. Since applicants have not disclosed a composition that requires the presence of alkali metal, applicants elect the first identified species "alkali metal," on the assumption that "alkali metal" means a species that does not exclude the presence of alkali metal.

¹ Specification, page 6, ln. 3-5. The specification further states, "Any alkali metal dichromates, soluble dichromates, dichromate ions, and potassium dichromate present in the compositions described herein or present in the compositions made by the methods described herein would be residual and, in a preferred embodiment, would not be present due to affirmative addition. Specification page 11, ln. 10-13.

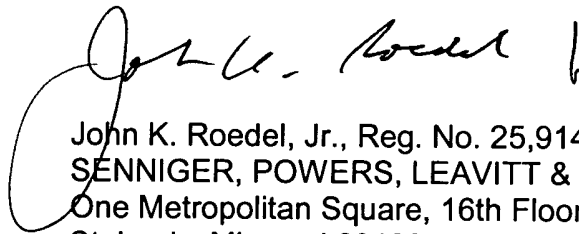
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CONCLUSION

If the Examiner has any questions, or would like to discuss any matters in connection with this response, she is invited to contact the undersigned attorney.

Please charge any fees under 37 C.F.R. 1.16 and 1.17 to Deposit Account No. 19-1345.

Respectfully submitted,



John K. Roedel, Jr., Reg. No. 25,914
SENNIGER, POWERS, LEAVITT & ROEDEL
One Metropolitan Square, 16th Floor
St. Louis, Missouri 63102
(314) 231-5400

JKR/LJH/vlm

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